consider the second issue at this stage, i.e., whether, if she accepted rent with knowledge of the existence of this sub-tenancy the plaintiff has waived her right to claim forfeiture for the breach of the covenant to sub-let.

In this regard there can be no possible doubt, as I see it, that the plaintiff knew full well that the management of this Resthouse was indeed a partnership. It should be remembered that her son-in-law, Ho Cheng Hin, who was also her attorney, was himself one of the partners and her daughter Daisy was employed by the partnership as a receptionist for some seventeen months during the period 1947 — 1948. True the plaintiff says that her son-in-law did not keep her properly informed of the actions he took regarding her property — so much so, indeed, that she denies even knowing originally that the defendant was going to use the premises as a Resthouse — further, she maintains that during 1947, 1948 and 1949, she never even met her daughter Daisy though her own house is not far from Marine Parade. Frankly I find these allegations very difficult to believe. The plaintiff normally garaged her car on the Resthouse premises, she is clearly a woman of intelligence and business acumen and quite apart from whether, on the principle of agency, she should be fixed with her son-in-law's knowledge, I have no doubt that she knew full well of the existence of the partnership and was quite happy to receive rent from it. It is not insignificant in this regard that as long ago as 12th August 1949 she seemingly instructed her then solicitors to inform "The Manager" of the Resthouse as to a change in the method of paying rent, (page 20 of Exhibit I).

I find, therefore, that the plaintiff both before and after 25th May 1950 — the date of the current lease when these proceedings were instituted — knew full well that the partnership was managing the Resthouse and that her son-in-law — by written agreement of which she must have had knowledge — was one of the partners. In these circumstances, and assuming that the partnership was in fact an unauthorised sub-tenant, thus breaching the defendant's covenant, the plaintiff clearly waived this breach by accepting rent from the partnership — *Walrond v. Hawkins*[1]. On this finding it is unnecessary for me to consider whether in law the defendant did or did not sub-let his tenancy to the partnership in breach of his covenant — because if he did not, there was certainly no breach.

Next I turn to the alleged sub-letting of Room No. 14 to the Wright family. Much conflicting and at times irrelevant evidence has been called to establish exactly what was this officer's position in these premises — but having considered it at length, I am not prepared to find that he was in fact an exclusive tenant. It must be remembered that when leaving the premises he gave only 48 hours' notice and that no question arose as to his paying rent even up to the end of the month. Again, whether or not it was done to enable someone to look after the Wright infant when his parents were out, it seems that for considerable periods the key to these rooms, like those of the other lodgers, was available to the Resthouse staff. Lastly I am not convinced, despite F/Lt. Wright's evidence, that his rooms were not cleaned by the Resthouse room boys though this may well have been done whilst Mr. Wright was away from home. Whether or not this family were lodgers is purely a question of fact and I am not prepared to find that the defendant did not retain the general control of their rooms or that the family should be deemed to be the exclusive tenant.

This must dispose of the case though I would record — in case a finding might be required elsewhere — that had the plaintiff succeeded on the sub-letting issues I should still have felt it unreasonable to make an order for possession. This partnership at great expense has renovated and repaired what I gather was previously a derelict ruin. The plaintiff, moreover, although it may not be large enough to house all her children and grandchildren — said to number some 30 - 40 people — has another house where she has been living — presumably quite happily — for many years. Her fifth son's wedding, it is said, has had to be postponed because he can find nowhere to live. Undoubtedly this is unfortunate — but it is not a hardship directly affecting the plaintiff and in my opinion, cannot reasonably suffice to deprive the defendant and his partners of the profit which their capital and hard work may make it possible for them to reap.

It follows that the plaintff's case must be dismissed with costs.

Claim dismissed.

GAN HENG SOO v. LEE NYONG TAI (f).

[App. Civ. Juris. (Abbott, J.) July 2, 1952]

[Malacca — Civil Appeal No. 1 of 1952]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 13(1)(i) — Brother — Whether member of family.

The plaintiff-respondent claimed possession of part of her premises which she had let to the defendant. The

defendant-appellant did not occupy the premises in the sense that he lived in them — he, in fact, carried on a business there under the style of Chop Hock Hin. Before the notice to quit was issued the defendant-appellant left the shop and a man named Heng Chor went to live there and began to carry on a business there. The sign "Chop Hock Hin" was removed and the sign of "Chop Sin Hin" was put up instead. The defendant-appellant declared that Heng Chor was his brother, that the business of Chop Sin Hin was his business, that Heng Chor was merely the manager and that Heng Chor was in occupation by virtue of being a member of his family. The learned Magistrate did not accept the evidence of the defendant-appellant and gave an order for possession.

Held, that (1) a brother is not a "member of his family" within the meaning of section 2 of the Control of Rent Ordinance; (2) the notice to quit was sufficient and good.

Obiter: The main purpose of the Control of Rent Ordinance is to protect tenants at a time when there is a shortage of dwelling and shop houses — it does not exist for the purpose of giving protection to those who by means of subtle devices, seek its protection.

CIVIL APPEAL.

P. Hall for the defendant-appellant.

C. S. Jayaswal for the plaintiff-respondent.

Cur. Adv. Vult.

Abbott, J. : — This is an appeal from a decision of the Magistrate sitting at Jasin. In the lower Court the plaintiff claimed possession of part of her premises which she had let to the defendant. The issue raised was as to whether or not the defendant or any member of his family was in occupation of the leased part within the meaning of section 13 (1) (i) of the Control of Rent Ordinance, No. 6 of 1948. It is common ground that the defendant did not occupy the premises in the sense that he lived in them — he, in fact, carried on a business there under the style of CHOP HOCK HIN. Before the notice to quit was issued the defendant left the shop and a man named Heng Chor went to live there and began to carry on a business there. The sign of CHOP HOCK HIN was removed and the sign of CHOP SIN HIN was put up instead. It was, and is, the case for the plaintiff that the defendant had abandoned the tenancy and remained no longer in occupation. The defendant, on the other hand, declared that Heng Chor was his brother, that the business of CHOP SIN HIN was his (the defendant's) business, that Heng Chor was merely the manager and that Heng Chor was in occupation by virtue of being a member of the defendant's family. The Magistrate found as a fact that the defendant was not, at the time of the notice to quit, in occupation of the premises and, by the implications of his finding, that the defendant had transferred the tenancy to another. The learned Magistrate gave an order for possession. Although the Magistrate's grounds of judgment are rather short and do not deal specifically with the point, it appears reasonable for this Court to hold that the lower Court did not accept the evidence that the new business belonged to the defendant — that the registration of the business name was effected after the notice to quit had been given in order to defeat the plaintiff's claim. As this Court sees it, the main purpose of the Ordinance is to protect tenants at a time when there is a shortage of dwelling and shop houses — it does not exist for the purpose of giving protection to those who by means of subtle devices, seek its protection. In any case the defendant's brother is not a "member of his family" within the meaning of section 2 of the Ordinance. Learned Counsel for the defendant raised the point that the notice to quit was out of order for want of precision as to the exact details of the tenancy. Whether this is so or not, it is perfectly clear (and could not have been otherwise to the defendant when he read it) that what the plaintiff wanted was vacant possession of all that part of the premises which had been in occupation of the defendant. This Court holds that the notice to quit is sufficient and, as such, good.

The appeal is dismissed, with costs.

Appeal dismissed.

K. KALIAMMAL v. R. G. MANICKAM.

[App. Civ. Juris. (Abbott, J.) July 2, 1952]

[Malacca — Civil Appeal No. 2 of 1952]

Limitation — Party relying upon the statute of limitations specifically to plead it.

There is an obligation imposed by the law of procedure in this country requiring the party relying upon the statute of limitations specifically to plead it, and failure to do so robs him of the value of the statute. It is no part of the duty of the Court to take notice of the statute of limitations unless it is specifically pleaded.

CIVIL APPEAL.

W. H. Sault for the appellant.

Respondent in person.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Abbott, J. : — This is an appeal from the President of the Sessions Court, Malacca. In the lower Court the plaintiff claimed from the defendant an amount due, as was alleged, in respect of wages payable by the defendant to him in respect of services rendered before the last war. The learned President gave judgment for the plaintiff and the defendant now appeals. The substantial ground of appeal is that